

1986 September 25

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

GEORGHIOS KOUIS AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTRY OF INTERIOR AND/OR
2. THE MINISTER OF INTERIOR,
3. THE COMMANDER OF POLICE,

Respondents.

(Cases Nos. 34, 42, 43, 44, 51, 54, 100,
150, 211, 219, 289, 351, 356, 373/85).

Police Force— Promotions— Gazetted Officers— The Police Law, Cap. 285, section 13 as amended by Law 29/66, section 2—The Police (Promotion) (Amendment) Regulations 184/83—Invalid as being promulgated by a procedure which was ultra vires the Law—Consequently, regulations 3, 4 and 5 of the Police (Promotion) Regulations are still in force as never having been repealed—Even if the intention in enacting the 1983 regulations was to leave the matter of promotion of Gazetted Officers to the unfettered discretion of the Minister under s. 13(1) of Cap. 285, such intention cannot be read into the 1958 regulations—Procedure set out in reg. 4 of the 1958 regulation not followed—Ground of annulment—Fact that evaluation of candidates may vary from district to district not a ground for not following the procedure set out in the regulations.

Administrative Law—Powers of administration—The administration has no power not to apply a regulation on the ground that it is ultra vires or otherwise invalid.

By means of the above recourses the applicants challenged the decision of the respondent Minister of Interior, whereby the 23 interested parties were promoted to the rank of Assistant, Superintendent of Police.

5 It should be noted that part of the reasoning of the sub
judice decision was to the effect that the gradings of the
candidates in the annual confidential reports were not
completely representative because the measure of assess-
ment which every superior officer has in his mind varies
10 from district to district and from section to section.

Counsel for the respondents argued, inter alia, that the
Police (Promotion) (Amendment) Regulations 184/83,
which had been found in a number of cases to be invalid,
were regulations made in respect of promotions of Non-
15 gazetted Officers only, that is, officers up to the rank of
Chief Inspector and not of Gazetted Officers, whose pro-
motions were within the absolute discretion of the
Minister under s. 13(1) of the Police Law.

20 *Held*, annulling the sub judice decision: (1) As it is
clear from the case law of this Court (*Lefkatis and Others*
v The Republic (1985) 3 C.L.R. 1372 and on appeal
Stavrou and Others v. The Republic (1986) 3 C.L.R. 361,
and *Savvides v. The Republic* (1986) 3 C.L.R. 998) the
25 Police (Promotion) (Amendment) Regulations 184/83, are
no longer in existence as having been promulgated by a
procedure, which was ultra vires the enabling law. As a
result regulations 3, 4 and 5 of the Police (Promotion)
Regulations 1958, which were saved by the proviso to
30 s. 13(3) of the Police Law, Cap. 285 as amended by
Law 29/66, are still in force as never having been repealed
(*Yiallouros v. The Republic* (1986) 3 C.L.R. 677 fol-
lowed). These regulations set out the procedure which has
to be followed, in case of promotions.

35 (2) The Administration is bound to follow the proce-
dure prescribed by the regulations, even if it believes that
they are ultra vires the law or otherwise invalid. It is only
the Court that can declare a law or regulation as ultra
vires or invalid. Even if in enacting the 1983 Regulations
the intention of the executive was to leave the matter of
40 promotion of Gazetted Officers to the absolute discretion

of the Minister of Interior, such intention cannot be read into the 1958 Regulations. which were the only valid Regulations.

(3) The reasoning given in the sub judge decision that the evaluation from district to district may vary is not a ground for not following the procedure contemplated by the regulations. 5

(4) The sub judge promotions have, therefore, to be annulled on the ground that the procedure followed by the regulations has not been followed. 10

Sub judge decision annulled.
No order as to costs.

Cases referred to:

Lefkatis and Others v. The Republic (1985) 3 C.L.R. 1372; 15

Stavrou and Others v. The Republic (1986) 3 C.L.R. 361;

Savvides v. The Republic (1986) 3 C.L.R. 998;

Yiallouros v. The Republic (1986) 3 C.L.R. 677.

Recourses.

Recourses against the decision of the respondents to promote the interested parties to the rank of Assistant Superintendent of Police in preference and instead of the applicants. 20

Ph. Valiantis for applicants in Cases Nos. 34/85, 51/85, 219/85 and 289/85. 25

A. S. Angelides, for applicants in Cases Nos. 150/85 and 273/85.

N. Clerides, for applicants in Cases Nos. 42/85, 43/85 and 44/85.

N. Pelides, for applicant in Case No. 54/85. 30

A. Papacharalambous, for applicants in Cases Nos. 351/85 and 356/85.

E. Efstathiou, for applicants in Cases Nos. 100/85 and 211/85.

M. Florentzos, Senior Counsel of the Republic, for the respondents.

5 *A. Magos*, for interested parties 2, 3, 7, 8, 10, 17 and 19.

P. Pavlou, for interested parties 4 and 16.

A. Poetis, for interested parties 5, 13, 15 and 18.

Chr. Vakis, for interested party 11.

10 *A. Paschalides*, for interested parties 12 and 23.

E. Lemonaris, for interested party 9.

Interested parties 6, 14, 20, 21 and 22 not represented.

Cur. adv. vult.

15 SAVVIDES J. read the following judgment. These recourses, which were heard together as presenting common questions of law and as challenging the same administrative act, are directed against the decision of the Minister of Interior to promote to the rank of Assistant Superintendent of Police the 23 interested parties whose names
20 appear in the attached list.

The sub judice promotions were effected by the Minister of Interior on the 31st December, 1984 and were published in the Police Weekly Orders of the same date.

25 The recourses were opposed by the respondents and by 18 of the interested parties who were represented by counsel.

30 It is the contention of counsel for the respondents that the said promotions were effected by virtue of the powers vested in the Minister of Interior under section 13(1) of the Police Law, Cap. 285, as amended by section 3(2) of Law 21/64 and Law 29/66. Under section 2, sub-section (1) of Cap. 285, a "Gazetted Officer" is defined as meaning, "a police officer of and above the rank of Assistant Superintendent and includes the Chief Fire Officer, the De-

puty Chief Fire Officer, the Fire Prevention Officer and the Director of Music."

The sub judice decision of the then Minister of Interior, which is annexed to the opposition as Appendix "B", reads as follows:

"I have studied the relevant material concerning each one of the candidates for the rank of Assistant Superintendent. I have discussed the matter with the Chief and Deputy Chief of Police. The grading of the candidates in the annual confidential reports unfortunately is based on the measure of assessment that every evaluating superior officer uses. Therefore, it is not completely representative because the measure of assessment which every superior officer has in his mind varies from district to district and from section to section. For a number of the above candidates I also have personal knowledge. Having weighed all the above, I have come to the conclusion that the most suitable for promotion are the following whom I promote to the rank of Assistant Superintendent as from the 15th December, 1984 "

and then the list of the 23 officers promoted to the rank of Assistant Superintendent, follows.

Counsel for the applicants based their arguments on a number of grounds of law which may be briefly summarized as being that the sub judice decision is null and void as violating the principle that the best candidate should be promoted, that the whole procedure under which the promotions were effected was wrong and contrary to the regulations, that the decision lacks due reasoning and that the Police (Promotion) (Amendment) Regulations, No. 184/83 whereby the provisions of Regulations 3, 4 and 5 of the Police (Promotion) Regulations, 1958 were repealed are null and void.

Counsel for the interested parties who were represented in the proceedings and counsel for the respondents, contended that the sub judice decision was taken properly and in accordance with the Law and the Regulations, in the due exercise of the discretionary power of respondent 1

and on the basis of the material before him and it has not violated either the Law or the Constitution.

5 Before embarking on the substance of the case and the legal arguments expounded by counsel on both sides, I find it necessary to set out the Law and review the recent case law of this Court as to the validity of the Police (Promotion) (Amendment) Regulations, 1983, irrespective of the fact that such Regulations refer to non-gazetted officers, i.e. officers below the rank of Assistant Superintendent.

10 Section 13 of Cap. 285, as amended by section 2 of Law 29/66 reads as follows:

“13. (1) Gazetted Officers shall be appointed, promoted and discharged by the Minister.

15 (2) Ὁ Ἀρχηγός, τῆ ἐγκρίσει τοῦ Ὑπουργοῦ, διορίζει, κατατάσσει, προάγει καὶ ἀπολύει πάντα τὰ μέλη τῆς Δυνάμεως μέχρι καὶ συμπεριλαμβανομένου τοῦ Ἀρχιεπιθεωρητοῦ.

20 (3) Οἱ ὅροι διορισμοῦ, κατατάξεως, προαγωγῆς, ὑπηρεσίας καὶ ἀπολύσεως μελῶν τῆς Δυνάμεως προβλέπονται ὑπὸ Κανονισμῶν γενομένων ὑπὸ τοῦ Ὑπουργικοῦ Συμβουλίου ἐπὶ τῆ βάσει τοῦ παρόντος ἄρθρου καὶ δημοσιευομένων εἰς τὴν ἐπίσημον ἐφημερίδα τῆς Δημοκρατίας:

25 Νοεῖται ὅτι μέχρι τῆς ἐκδόσεως τῶν ἐν τῷ παρόντι ἐδαφίῳ προβλεπομένων Κανονισμῶν οἱ κατὰ τὴν ἡμερομηνίαν ἐνάρξεως ἰσχύος τοῦ παρόντος Νόμου, ἐν ἰσχύϊ Κανονισμοὶ καὶ Γενικαὶ Διατάξεις, θὰ ἐξακολουθήσωσιν ἐφαρμοζόμενοι.

30 (4) Κανονισμοὶ ἐκδιδόμενοι ἐπὶ τῆ βάσει τοῦ παρόντος ἄρθρου κατατίθενται εἰς τὴν Βουλὴν τῶν Ἀντιπροσώπων. Ἐὰν μετὰ πάροdon δεκαπέντε ἡμερῶν ἀπὸ τῆς τοιαύτης καταθέσεως, ἡ Βουλὴ τῶν Ἀντιπροσώπων δι' ἀποφάσεως αὐτῆς, δὲν τροποποίησῃ, ἢ ἀκυρώσῃ τοὺς, οὕτω κατατεθέντας Κανονισμοὺς ἐν ὅλῳ ἢ ἐν μέρει τότε οὗτοι, ἀμέσως, μετὰ τὴν πάροdon τῆς ἄνω προθεσμίας δημοσιεύονται ἐν τῇ ἐπίσημῃ ἐφημερίδῃ τῆς Δημοκρατίας καὶ τίθενται ἐν ἰσχύϊ ἀπὸ τῆς

τοιαύτης δημοσιεύσεως. Ἐν περιπτώσει τροποποιήσεως τούτων ἐν ὅλῳ ἢ ἐν μέρει ὑπὸ τῆς Βουλῆς τῶν Ἀντιπροσώπων οὗτοι δημοσιεύονται ἐν τῇ ἐπισήμῳ ἐφημερίδι τῆς Δημοκρατίας ὡς ἤθελον οὕτω τροποποιηθῆ ὑπ' αὐτῆς καὶ τίθενται ἐν ἰσχύϊ ἀπὸ τῆς τοιαύτης δημοσιεύσεως».

5

“(2) The Commander, with the approval of the Minister, appoints, enlists, promotes and discharges all members of the Force up to and including the Chief Inspector.

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(3) The conditions of appointment, enlistment, promotion, service and discharge of members of the Force shall be in accordance with the provisions of the Regulations to be made by the Council of Ministers under this Law and published in the official Gazette of the Republic:

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Provided that until the making of the Regulations provided for in this section, the Regulations and General Orders in force on the day of the coming into operation of this Law will continue to be applicable.

20

(4) Regulations issued under this section are deposited with the House of Representatives. If after the lapse of fifteen days from such deposition, the House of Representatives by its decision does not amend or cancel the so deposited Regulations in whole or in part then the Regulations immediately after the lapse of the above time limit are published in the official Gazette of the Republic and take effect as from such publication. In the case of their amendment in whole or in part by the House of Representatives they are published in the official Gazette of the Republic as they might be amended by the House and they take effect from such publication”.

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In the case of *Lefkatis and Others v. The Republic* (1985) 3 C.L.R. 1372, a Judge of this Court (Stylianides, J.) in dealing with a number of cases of Police Inspectors, eligible for promotion to the rank of Chief Inspector, challenging the promotion of others instead of them, held that the Police (Promotion) (Amendment) Regulations of

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1983 made under section 13(3) of the Police Law, as amended by section 2 of Law 29 '66, are invalid, as the procedure contemplated by sub-section (4) of section 13 of the Law, that such Regulations had to be laid before the House of Representatives, had not been complied with. In delivering his judgment, the learned Judge dealt with the relevant provisions concerning promotions provided by sections 10 and 13 respectively and found as follows at page 1389:

10 "The Police (Promotion) (Amendment) Regulations No. 184 '83 effected radical changes to the Police (Promotion) Regulations. They created bodies for examination, selection, and recommendation for the purpose of promotion of the non-Gazetted Officers and provided the procedure, etc., leading to the act of the promotion. These Regulations were made by the Council of Ministers under s. 10.

20 Section 10 was repealed by implication in so far as it related to promotions by the posterior Law No. 29 '66 which repealed and substituted s. 13(2) and (3) and made specific provision for the issue of Regulations, which shall be laid before the House of Representatives for the ultimate control by the legislature before they are issued and published. The Regulations, which did not conform to the enabling Law in form and in substance and in the way they were made and issued are void and non-existent. This, however, does not affect the validity of the basic Regulations pre-existing the invalid amendments."

30 The case came before the Full Bench on appeal by the interested parties affected by such annulment (See *Stavrou and others v. The Republic* (1986) 3 C.L.R. 361). The Full Bench affirmed the decision of the trial Court and dismissed the appeal of the interested parties. Pikiis, J. in delivering the judgment of the Court, had this to say at pp. 366 - 367, concerning section 13 and section 10 of the Police Law.

40 "Section 13(3), as amended by s. 2 of Law 29 '66, expressly provides that conditions for the promotion of all members of the force should be governed by Re-

gulations made by the Council of Ministers, 'on the basis of s. 13 of the Law'. Thereafter, Regulations governing the conditions, inter alia, of promotion of members of the force could only be made under s. 13(3) and laid before the House of Representatives, 5 as provided in subsection 4 of s. 13 of the Law. The power earlier vested under s. 10 of the Law to make Regulations in relation, inter alia, to the conditions of promotion of non gazetted officers in the manner envisaged therein, was expressly taken away and vested 10 in the Council of Ministers subject to and in accordance with the provisions of s. 13(3) (as amended by Law 29/66). Reconciliation between the two provisions was no longer possible. However hard we may strive to reconcile the provisions of the two sections 15 of the law, s. 10(2) and s. 13(3), conflict is unavoidable. The only way to resolve it is by holding that the 1966 legislation amended by necessary implication, the rule-making power vested under s. 10(2) confining 20 competence to regulate promotions to the Council of Ministers in accordance with and subject to the provisions of subsections 3 and 4 of s. 13 of the law. The specific reference made in sub-section 3 to rules made under that particular section of the law confirms 25 beyond doubt the intention of the legislature to confine rule-making power under s. 10 to matters other than those specified in s. 13(3)."

Following that decision, I annulled the promotion of a number of Police Sergeants to the rank of Police Inspector in Cases 4/85 etc. *Andreas Savvides v. The Republic* 30 (judgment delivered on the 26th June, 1986)* having concluded that the promotion had been made under the 1983 Regulations which were invalid.

In the case of *Polyvios Yiallourous v. The Republic* Case No. 189/85,** in which I delivered my judgment on the 10th April, 1986, I concluded that the fact that the Regulations of 1983, amending the Regulations in force, of 1958, were declared invalid, did not affect the validity of the 1958 regulations which were saved by the proviso, to, 35

* Reported, in (1986) 3 C.L.R. 998.

** Reported in (1986) 3 C.L.R. 677

s. 13(3) of Cap. 285 as amended by Law 29/66 whereby provision is made that the regulations existing at the time of enactment of Law 29/66 will continue to be in force until the enactment of new regulations.

5 It is clear from the above that the 1983 Regulations are no longer in existence as being promulgated by a procedure which is ultra vires the enabling law. As a result, Regulations 3, 4 and 5 of the 1958 Regulations, are still in force as never having been repealed.

10 I will proceed now to consider the other points.

It is the contention of counsel for the respondents that the promotions were effected by the Minister in the exercise of his unfettered powers under section 13(1) of the Police Law, Cap. 285 as amended by section 2 of Law
15 29/66.

He submitted that sub-sections (2) and (3) of section 13 of Cap. 285 were repealed and substituted by the new sub-sections introduced by Law 29/66 (section 2) which, read together, imply that Regulations prescribing
20 the procedure for promotions are applicable only to non-gazetted officers and in respect of gazetted-officers there is no provision for regulations as the matter is left to the absolute discretion of the Minister under section 13(1). In support of his argument he further submitted that
25 irrespective of the fact that the Regulations of 1983 (184/83) were declared invalid, they were regulations made in respect of promotions of non-gazetted officers only, that is, officers up to the rank of Chief Inspector and not of gazetted officers, whose promotions were within the
30 absolute discretion of the Minister under section 13(1).

He further submitted that the Minister did not act in contravention of any provisions of the 1958 Regulations which remained in force after the declaration by the Court of the Regulations of 1983, as invalid. He contended that
35 the provisions of Regulation 4 of the Police (Promotion) Regulations, 1958, were not violated, and the fact that the procedure contemplated by Regulation 4 was not followed, does not affect the validity of the sub judge promotions.

It was his submission that under section 10 of Cap. 285, the Council of Ministers is empowered to make Regulations in matters related to such section, which, under subsection (2) (f) include promotions; there is a clear indication of the intention of the Council of Ministers, when promulgating the 1983 Regulations, to make provision only in the case of non-gazetted officers and leave the matter of the gazetted officers within the discretion of the Minister under section 13(1) of the Law. The intention of the Council of Ministers that Regulation 4 of the 1958 Regulations, should not be applied in the case of gazetted officers, is clearly expressed by the provision for the repeal of Regulations 3, 4 and 5 and their substitution by other Regulations applicable only to officers up to the rank of Chief Inspector.

Counsel lastly argued, with regard to the merits of the case that the principle that the best candidates should be promoted was not violated and that the decision of the Minister to promote the interested parties was reasonably open to him, on the material before him.

I find myself unable to agree with the above contentions of counsel for the respondents. The Police (Promotion) Regulations, 1958, which are still in force, have set out the procedure which has to be followed in case of promotions.

Regulation 4 of the 1958 Regulations (to be referred to as the Regulations) provides as follows:

"4. (1) Selection for promotion up to and including the rank of Assistant Superintendent shall be made by a Selection Board (hereinafter referred to as 'the Board') appointed by the Chief Constable from time to time, consisting of the Deputy Chief Constable or the Assistant Chief Constable (A) as Chairman, Chief Superintendent (A) and two Gazetted Officers of Turkish and Greek Cypriot extraction respectively, as members. Divisional and Unit Commanders may sit with the Board as advisers.

(2) The Board shall meet at least once each year

to interview and report upon those recommended for promotion.'

5 By such procedure an opportunity is afforded for the evaluation of candidates so as to assist the selection of the best candidates and the matter of evaluation is not left to the absolute and unfettered discretion of the Minister

10 The Administration is bound to follow the procedure prescribed by the regulations, even if it believes it to be ultra vires the Law or otherwise invalid. It is only the Court that can declare a law or Regulation as ultra vires or invalid and the only course open to the administration is to take any other step to abolish, amend or repeal by legislation any such provision

15 Even if the intention of the executive was, as counsel for the respondents has put it, making reference to the 1983 Regulations, to leave the matter of promotion of gazetted officers to the absolute discretion of the Minister this intention cannot be read into the 1958 Regulations which are the only valid Regulations

20 The reasoning given in the Minister's decision that the evaluation from district to district may vary is not a ground for not following the procedure contemplated by the regulations

25 If in the opinion of the Minister such method was not the proper one, he could have moved the government for the drafting of new regulations on the basis of his observations to be promulgated in the proper way

30 I, therefore, have come to the conclusion that the sub judice promotions have to be annulled on the ground that the procedure provided by the regulations has not been followed. As to the contention of counsel for interested parties Prokopis Georghiou, Anastassis Prastitis and Eraklis Frangos, that regulation 4 has been revoked by regulations published under Notification 312 of the 13th August, 35 1960 I find same entirely wrong and unfounded. Notification 312 of 1960 refers to an amendment of the Police (General)

Regulations which are completely different from the Police (Promotion) Regulations of 1958 and it appears that there is a misconception on counsel's part in this respect.

In view of my finding as above, I do not propose to deal with the merits of the case. 5

In the result these recourses succeed and the sub judice promotions are hereby annulled. In the circumstances I make no order for costs.

Sub judice decision annulled.

No order as to costs. 10

SCHEDULE "A"

1.	M. Patsalides	
2.	M. Iordanous	
3.	N. Koupatos	
4.	N. Papageorghiou	15
5.	Pr. Georghiou	
6.	D. Loizou	
7.	Chr. Georghiou	
8.	A. Panayi	
9.	A. Lemonaris	20
10.	P. Hadji Loizou	
11.	P. Papagregoriou	
12.	E. Kyriakides	
13.	A. Prastitis	
14.	M. Odysseos	25
15.	E. Frangos	
16.	N. Onisiforou	
17.	St. Zavros	
18.	N. Solomonides	
19.	N. Kazafaniotis	30
20.	A. Kokkinos	
21.	M. Pattichis	
22.	A. Demetriades	
23.	P. Frydas.	